



**IN THE MATTER OF THE DEATH OF A MALE
IN AN INCIDENT INVOLVING MEMBERS OF THE RCMP
NEAR THE CITY OF KAMLOOPS, BRITISH COLUMBIA
ON SEPTEMBER 14, 2018**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

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Introduction

On September 14, 2018, two RCMP members stopped to investigate a pick-up truck and trailer parked off a rural road near Kamloops. The Affected Person ("AP") responded to the police presence by firing several rounds from a shotgun at both officers, who both returned fire. AP was struck by a bullet fired by the Subject Officer ("SO") and was killed.

The narrative below is based on evidence collected and analyzed during the investigation, including the following:

- statements of nine civilian witnesses;
- statements of four witness police officers;
- police computer-aided dispatch ("CAD") PRIME and CPIC records;
- police radio and 911 call recordings;
- forensic scene examination and photographs;
- firearm examinations and ballistics analysis; and
- autopsy findings.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, SO declined to provide access to his notes or reports, and declined to participate in an IIO interview.

Narrative

SO's initial involvement in this case came when he responded to a call in the early afternoon of September 14, 2018. The caller had reported seeing a pick-up truck with a trailer parked beside the road. The trailer was said to be badly burned on one side. SO went to the location, but the pick-up and trailer were gone.

About three hours later, at 4:24 p.m., there was another call about a truck and a trailer with a burned-out side, parked off the road in a remote area of bush outside the city. The call taker was told that personal property was strewn around outside the trailer, and there was a male present, who appeared to be "*high*."

There was no civilian eyewitness to the most significant of the events that ensued. In reconstructing the account of those events below, IIO investigators had the benefit of an eyewitness account provided in duty reports and interview statements from Witness Officer 1 ("WO1"), as well as recordings of police radio communications and a significant amount of physical forensic evidence from the scene and from exhibits found there.

Responding to the second 911 call, SO went to the location in company of WO1, driving separate marked police vehicles. Both officers were in full police uniform. They found a truck and trailer, matching the description they had been given, backed into the grass and scrub on the left side of the road. SO drove a short distance past the truck and parked. WO1 pulled up and parked a short distance before the truck. Both officers parked on the left-hand side of the road.

In an interview with IIO investigators, WO1 described walking out in front of his vehicle and calling out, identifying the officers as RCMP members. He said that AP responded by coming out of the trailer, agitated and repeatedly saying things about “*constant harassment*.” WO1 said that both officers tried to talk with AP to explain that they just wanted to check on his welfare and to confirm that he had permission to camp there. WO1 said he asked a number of times for AP to come over to him, but AP refused, waving his arms and yelling at the officers to leave, insisting they were just there to put him “*in handcuffs*.”

While these exchanges were occurring, a passing civilian, Civilian Witness 1 (“CW1”), stopped his vehicle on the road and talked with SO. CW1 told investigators that he gave SO the telephone number of the landowner. CW1 described both officers as appearing relaxed, patient, “*calm and collected*.” WO1, he said, was standing on the shoulder of the road with his hands on the front of his belt. CW1 said AP was “*cranked up pretty good*.” He said AP was “*rude ... bordering on threatening almost ... not acting normal*.” As he drove away, CW1 was sufficiently concerned about AP’s behaviour that he called family and neighbours advising them to lock their gates.

At about this time, SO suggested to WO1 that another police unit should be asked to attend. When Dispatch requested a situation update, WO responded that they were “*ok right now*,” but asked that another unit “*start making their way up here, he’s a little hostile*.”

As WO1 finished the radio transmission he saw SO walking up the driver’s side of AP’s truck. WO1 assumed this was to find a licence plate as there was no licence plate on the front of the truck. WO1 said there was nothing unusual, unprofessional or threatening in this, and that it was normal police procedure in the circumstances, as a way of trying to determine an individual’s identity.

AP, though, reacted angrily. WO1 said that AP evidently heard SO approaching, and came from the area of the trailer door to the front of the trailer. Seeing SO close to the trailer, AP’s demeanour “*shot straight up*.” WO1 told investigators that AP said “*‘You guys are in for it’, something along the lines of that, and I do remember something like ‘I’ll put you guys on the news’, or ‘I’m going to be on the news’.*” AP then went “*purposefully*” back up the steps into the trailer, and WO1’s “*threat risk*” increased substantially. Standing just in front of his police vehicle, WO1 drew his sidearm and held it at the ‘low

ready', telling SO to *"get out of there right now."* To his right, he saw SO backing away towards the front of the pick-up, also drawing his pistol.

Moments later, WO1 saw the barrel of a firearm appear out of the trailer door. He saw and heard it fire in his direction, and then fire again as he *"stumbled"* back behind the front passenger side of his vehicle. He said he could hear further shots and could then hear the shotgun being reloaded. He recalled reaching for his '10-33 button' (officer needs assistance) and *"peeking"* through his vehicle's windows, trying to locate AP. SO radioed *"shots fired."* Both officers returned fire from their service pistols.

WO1, seeing SO *"backpeddling"* to his vehicle and opening a door to reach inside, anticipated that SO was retrieving his service carbine. Shortly afterwards, WO1 could see AP moving through the long grass in a crouch or crawl, a shotgun to his shoulder pointed *"right at"* SO. WO1 continued firing his pistol at AP, as he believed SO was at imminent risk of serious harm or death from AP, but then heard shots that did not sound like either the shotgun or a pistol. AP fell backwards, firing his shotgun straight up into the air as he fell. WO1 radioed to SO that *"he's down in front of his trailer, I can't see him right now, he's in the grass."* The two officers passed information to Dispatch and waited for further police units and paramedics to arrive.

The third officer on scene, WO2, said he arrived about two minutes after the *"shots fired"* call. He parked his police vehicle close to WO1's, put on his body armour and took cover with WO1. The officers were not able, at this point, to determine AP's condition.

Shortly after, another civilian witness, CW2, who had heard the exchange of gunfire, drove to the scene. He saw SO moving behind his police car, his carbine aimed in the direction of the trailer. CW2 took a photograph of the scene, and provided a copy to the IIO. Also arriving at about the same time was CW1, who returned to the scene as he was a firefighter and knew that it would take some time for emergency services to reach the remote location. He saw three RCMP members in defensive positions behind their vehicles.

As several other officers arrived to establish a perimeter, SO told one of them, WO3, that AP had *"come out shooting."*

It was only after Emergency Response Team resources arrived that it was confirmed that AP was deceased, and the trailer and surrounding area were cleared to ensure there were no further threats.

Subsequent forensic scene examination resulted in the recovery of 31 spent 9mm pistol cartridge casings. They were located in three areas: to the side and rear of WO1's police vehicle, on the roadway around the front of the pick-up truck, and close to SO's vehicle.

The casings closest to WO1's vehicle were matched to WO1's firearm; those from the other two areas were matched to SO's pistol. There were fourteen spent casings found close to the front of SO's vehicle that were matched to SO's carbine.

Eleven spent shell casings matched to AP's shotgun were located in areas in front of the trailer door and on the passenger side of the pick-up truck. A 12-gauge pump-action shotgun was found under AP's body and three live shotgun shells were located close by. A second shotgun, with semi-automatic action, was discovered in the trailer. Both shotguns had been shortened, making them prohibited weapons. Numerous live shotgun shells were found in the trailer.

Shotgun pellets of a type consistent with the shotgun ammunition found were recovered from the front driver's side quarter panel of WO1's vehicle. WO1's vehicle had also sustained damage in the rear driver's side passenger door and window. SO's police vehicle had been struck and penetrated by a shotgun slug on the front driver's door, just below the window, and there was peppering from shotgun pellets in the door and in the rear window where it meets the roof.

Trajectory analysis confirmed that shots penetrating the pick-up and trailer originated from three general areas: the area around WO1's vehicle, the area on the road in front of the pick-up, and the area around SO's vehicle.

WO1's police vehicle was fitted with dashcam equipment; SO's police vehicle was not. IIO investigators discovered that the camera in WO1's vehicle was not functioning at the time of the incident. This was confirmed by a technical expert, CW3, who was not able to power up the camera, and who determined that the camera's memory card had not recorded any video since September 8, 2018.

The autopsy report stated that the cause of AP's death was "a gunshot wound to the head." A "smaller diameter projectile [such as that fired by a 5.56mm carbine]" had entered above and behind the left ear and had exited behind the right ear. The trajectory was said to have been "from left to right, almost horizontal and almost straight across, slightly front to back." AP had no other significant injury. The toxicology report concluded that there had been a "mild level of intoxication" from consumption by AP of alcohol and methamphetamine.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident under investigation. More specifically, the issues to be considered in this case are whether either involved officer may have committed an offence by deploying lethal force against AP, and

whether SO may have committed culpable homicide by shooting and causing the death of AP.

If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in doing what they were required or authorized to do, and in using as much force as was necessary for that purpose. Use of unauthorized or excessive force would be unjustified, and could result in criminal liability.

The only eyewitness to the incident available to IIO investigators is WO1, as SO has declined to provide a statement or to participate in an interview. The account provided by WO1, though, is detailed and exhaustive, and is corroborated in all respects by physical evidence and forensic examinations, by autopsy results, by contemporaneous radio recordings, and in peripheral respects by civilian and other police witnesses.

It is worth highlighting the following forensic details:

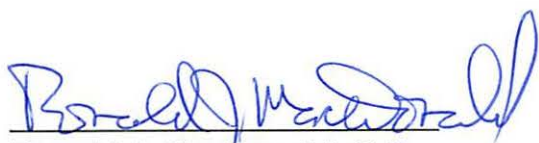
- a) The shell casings from both officers' firearms and AP's shotgun were found in locations that are consistent with WO1's statement;
- b) The trajectories of shots from the police and from AP are consistent with WO1's statement;
- c) Pellets and slugs matching AP's shotgun hit both cars. There is evidence of at least 5 of AP's shots hitting the cars.
- d) AP's gun was found underneath him.
- e) The radio calls are consistent with WO1's statement.
- f) The observations of the two civilian witnesses who arrived shortly after the shooting ended confirmed that both officers were still in defensive positions in relation to AP.
- g) The path of the fatal shot, from left to right, was entirely consistent with the evidence of WO1 and the positioning of the officers.

It is unfortunate that dashcam video was not available to assist the IIO investigation, but the extensive body of evidence that is available is sufficient to draw clear conclusions. That evidence does not provide grounds to consider any charge against any officer.

There is no suggestion that either involved officer acted inappropriately in any way in their approach to AP. They were authorized as police officers to make routine inquiries of an individual they had found apparently camping on private land in somewhat suspicious circumstances. Neither is there any suggestion that AP's resort to violence against them had any legitimate basis in the words or actions of either officer. Both officers were entirely justified in returning gunfire in self-defence, and in defence of each other, when fired directly and repeatedly upon by AP, and cannot be said to have used excessive force in doing so.

The evidence demonstrates that AP initiated what turned out to be a “shootout” between himself and two officers. The officers responded the only way they could: with gunfire. All but one of their rounds failed to hit AP. It was only when SO was able to strike AP with a round from his carbine that the shooting ended.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald".

Ronald J. MacDonald, Q.C.
Chief Civilian Director

May 8, 2019

Date of Release